



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,007	11/17/2003	Gary D. Childres	64099-00001USPT	3289

7590 08/29/2005

Stuart D. Dwork  
Jenkins & Gilchrist, P.C.  
3200 Fountain Place  
1445 Ross Avenue  
Dallas, TX 75202-2799

EXAMINER
----------

AYRES, TIMOTHY MICHAEL

ART UNIT	PAPER NUMBER
----------	--------------

3637

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/715,007

Applicant(s)

CHILDRES ET AL.

Examiner

Timothy M. Ayres

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/21/04, 6/01/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

This is a first office action on the merits of application SN 10/715,007.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 17 and 42 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is not disclosed how the fiberglass pipe is connected to the guide rail or any structure in order for it to allow the first glide block to slide along the first glide rail.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-10,14-16,18-34,39-41 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by "The Butterfly freestanding shade from Sunesta Products"

Brochure', 4 pages; dated 1997 (therein referred to as The Suneta Brochure with marked up copies attached). The Suneta Brochure discloses an awning assembly with a pair of support legs (12a, 12b). A horizontal truss brace (14) connects the two legs (12a, 12b) with a roller tube (18) above. Glide rails are associated with the legs and are inherent in the design to get the glide blocks (24a, 24b) to move up and down as best seen in figures 2 and 3 on page 2. The glide blocks (24a, 24b) are hingedly attached to the front arms (26a, 26b) and rear arms (28a, 28b). The front arms (26a, 26b) and rear arms (28a, 28b) are attached to a front bar (30a) and a rear bar (30b) that run parallel to roller tube (18). Connected from the roller tube (18) to the front and rear bars (30a, 30b) is a canopy material. A mechanism to raise and lower with either a hand crank (A') or motor (B') is shown in figure 4 and 5 on page 3. A glide block ribbon (25a, 25b) is attached from the glide block (24a, 24b) up to the roller tube (18) as best shown in figure 3 on page 2 and figure 5 on page 3. When the ribbon (25a, 25b) is let out to cause the glide block (24a, 24b) to be lowered the canopy material is rolled up and the reverse is true, when the ribbon (25a, 25b) is pulled in the glide block goes up and the canopy material is let out of the roller tube (18). A base plate (16a, 16b) is attached to the bottom of each leg (12a, 12b) to help support the structure as best seen in figure 2 and 3 on page 2. A curved brace (15a, 15b) is attached from the leg to the horizontal truss (14) to help strengthen the structure. Inherently the canopy material is attached to the roller tube (18) via one or multiple slots in the roller tube since it is the well-known method of attaching a canopy to a roller.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11, 12, 35, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Sunesta Brochure in view of U.S. Patent 3,221,756 to Rupright. The Sunesta Brochure discloses every element as described above except the awning assembly being adapted for mounting onto a table. Rupright '756 discloses an awning assembly (13) that has a clamp (36) attached to the leg (18) by a chain (37). The clamp (36) is used to hold the base plate (35) of the leg (18) to the tabletop (11). At the time of the invention it would have been obvious for a person of ordinary skill in the art to take the awning assembly of the Sunesta Brochure and add the clamp of Rupright so that the picnic table can be protected from the sun or rain.

5. Claims 13 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Sunesta Brochure in view of U.S. Patent 5,628,273 to Crouse. The Sunesta Brochure discloses every element as described above except for a mister attached to the horizontal truss. Crouse '273 discloses a misting device (10) that includes tubing (12) secured to a truss (100) that supports a canopy (102) on a boat (104). At the time of the invention it would have been obvious for a person of ordinary skill in the art to

Art Unit: 3637

take the awning of the Sunesta Brochure and add the mister of Crouse '273 to provide mist to cool the surrounding people.

6. Claims 17 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Sunesta Brochure in view of U.S. Patent 2,029,886 to Marshall. The Sunesta Brochure discloses every element as described above except for a hollow steel tube having a rectangular shape with a steel pipe attached to an inner surface of the tube and a fiberglass pipe in contact with the inner surface of the steel pipe. Marshall '886 discloses an awning assembly with uprights (10) made of pipe. A glide block (13) slides on the upright (10) and the glide block is hingedly attached to front and rear arms (14) as best seen in figure 2. As seen in figure 7, the glide block (13) is rectangular in shape with a hole in the middle to allow for the upright (10) to slide in it. Marshall '886 discloses that the pipe can be made of any material suitable, but preferably piping, which would include fiberglass (col. 1, line 46-52). Marshall does not disclose expressly that the glide block (13) is hollow.

7. It would have been obvious matter of design choice to modify the glide block of Marshall by making it from a hollow tube and a steel pipe versus a solid piece of metal, since applicant has not discloses that having the hollow tube and steel pipe combination solves any stated problem or is for any particular purpose and it appears that the glide block would perform equally as well as one solid piece.

Art Unit: 3637

8. At the time of the invention it would have been obvious for a person of ordinary skill in the art to use the glide block of Marshall with the awning assembly of the Sunesta Brochure so that the awning can be adjusted to shade from the sun.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 3,789,903 to Clark discloses an awning assembly that has a pipe as a glide rail and that adjusts in a similar manner to the applicant's invention. U.S. Patent 2,896,651 to Hilligoss discloses an awning assembly that includes a roller tube and foldable arms. U.S. Patent 1,742,437 to Davenport discloses an awning that includes a glide rail with a glide block ribbon and a roller tube and the assembly moves in a manner similar to the applicant's invention. U.S. Patent Publication 2001/0045293 to Tam discloses fiberglass and metal tubes sliding together. U.S. Patent 3,233,618 to Ferrier discloses an awning structure attached to a table. U.S. Patent 3,417,764 to Hemenway discloses an awning assembly that is attached to a table. U.S. Patent 3,383,127 to Grunfeld discloses an awning assembly attached to a table. U.S. Patent 6,886,759 to Okronick discloses a misting device that is attached to the frame of an umbrella. U.S. Patent 6,112,538 to Strussion discloses a misting device that is attached to the canopy of a vehicle. U.S. Patent 6,151,907 to Hale discloses a misting device that is attached to the canopy of a vehicle.

Art Unit: 3637

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-FRI 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TMA  
8/11/05



LANNA MAI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

